



“Godinger Silver Product,” attached hereto as Exhibit A) due to alleged patent infringement of a design patent owned by Chambong Industries.

4. Upon information and belief, Chambong Industries is currently doing business in this judicial district, has purposefully availed itself of the privilege of conducting business with residents of this judicial district, and/or has established sufficient minimum contacts with New York such that Chambong Industries should reasonably and fairly anticipate being hauled into court in New York.
5. Venue is proper in this judicial district at least under 28 U.S.C. §§ 1391 and 1400(b).

#### **BACKGROUND**

6. Godinger Silver first sold the Godinger Silver Product on Amazon.com on or about December 20, 2017.
7. On information and belief, Chambong Industries contacted Amazon requesting the removal of the Godinger Silver Product from Amazon.com because the product allegedly infringed U.S. Design Patent No. D795,642 (“the ‘642 patent,” attached hereto as Exhibit B) owned by Chambong Industries.
8. On or about January 11, 2018, Amazon notified Godinger Silver that as a result of the Chambong Industries “take down” request, it would be removing the Godinger Silver Product.
9. The application for the ‘642 patent was filed on June 23, 2015, and issued as a patent on August 29, 2017.

10. Based on Chambong Industries' removal of the Godinger Silver Product from Amazon.com, there is now an actual and justiciable controversy between Plaintiff and Chambong Industries regarding, *inter alia*, infringement of the '642 patent that is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

### **FIRST COUNT**

#### **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '642 PATENT)**

11. Plaintiff repeats and realleges each of the foregoing paragraphs of this Complaint.
12. The use, manufacture, offer for sale, sale, and/or importation of the Godinger Silver Product does not infringe and will not infringe, directly or indirectly, the '642 patent because the accused Godinger Silver Product and the article depicted in the '642 patent are sufficiently different in the eyes of the ordinary observer.
13. The drinking vessel portion of the Godinger Silver product is significantly different in appearance as compared to the drinking vessel portion of the patented design. In particular, the vertical sides of the drinking vessel portion in the Godinger Silver product are straight such that the diameter of that portion linearly increases from a minimum value at the mouth to a maximum value just prior to the bent stem. *See* Exhibit A. In contrast, the design patent depicts this feature as a curved or "hourglass-shape" design which starts at a first diameter (D1), expands to a second diameter (D2) larger than the first diameter, and then tapers to a smaller, third diameter (D3) at the bent stem. (*See* Exhibit B, handwritten notations on Figure 2). In any event, to the extent that the shape of the drinking vessel portion is limited to

the shape of a champagne flute to maintain the carbonation of the champagne, this portion of the design is functional, and therefore should be attributed less weight in determining design patent infringement.

14. Also, the shape of the transition area between the bottom of the beverage holding portion to the bent stem in the Godinger Silver product is sharply curved, as compared to a gradual curvature in the '642 patent. (*See id.*, handwritten notation labeled "Region A").
15. Furthermore, the tube portion (which acts as a straw) in the '642 patent is clearly functional, to provide a conduit for champagne to pass through; therefore, that feature should not be considered in determining design patent infringement.
16. Applying the ordinary observer test in view of the differences discussed above, the Godinger Silver Product does not infringe the '642 patent. Godinger Silver is therefore entitled to a declaration that Chambong Industries has no claim for relief from or against Godinger Silver for any alleged infringement of the '642 patent, and therefore should cease interfering with Godinger Silver's ability to market its product, including requesting that the Godinger Silver Product be removed by Amazon.

**PLAINTIFF'S REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor and against Defendant Chambong Industries as follows:

- A. Declaring that Godinger Silver's product has not and will not infringe the '642 patent;
- B. Declaring this case exceptional and awarding Plaintiff its reasonable attorneys' fees under 35 U.S.C. § 285;
- C. Awarding Plaintiff its costs and expenses; and
- D. Awarding Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

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COZEN O'CONNOR

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